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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

UNITED STATES OF AMERICA,)	Case No. CR 05-60008-HO
)	
Plaintiff,)	SUPPLEMENTAL RESPONSE TO COURT
)	ORDER REGARDING WITNESSES THE
vs.)	DEFENSE SEEKS TO CALL AT AN
)	EVIDENTIARY HEARING ON THE
PIROUZ SEDAGHATY)	MOTION TO DISMISS
)	
Defendant.)	

Defendant seeks to call an additional witness at the evidentiary hearing on his Motion to Dismiss: FBI Special Agent Shawna Carroll.

This motion is based upon: (1) information provided by the government after defendant filed his original list of witnesses; (2) the pleadings previously filed by the defense; and (3) due process and the interests of justice.

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DEFENSE SEEKS TO CALL AT AN EVIDENTIARY HEARING ON THE MOT TO
DISMISS

On March 21, 2011, the defense filed its Response to Court Order Regarding Witnesses the Defense Seeks to Call at An Evidentiary Hearing on the Motion to Dismiss. CR 548. The defense listed four witnesses: AUSA Chris Cardani, AUSA Charles Gorder, FBI SA David Carroll, and IRS-CID SA Colleen Anderson. This Court subsequently ruled that the defense may call Agents Colleen Anderson and David Carroll as witnesses, but not AUSAs Chris Cardani and Charles Gorder.

On March 24, 2011, three days after the defense filed its Response, the government filed its Declaration of FBI Special Agent Michael Sweeney. CR 551. This document makes clear in paragraphs 4 - 6 that there is another important witness that must be called by the Defense, FBI SA Shawna Carroll:

4. My review of this CHS file indicates it was first "opened and assigned" to Special Agent (SA) Shawna M. Carroll on the basis of her written request, and upon Assistant United States Attorney (AUSA) Chris Cardani's verbal concurrence given on November 3, 2003. The file was subsequently re-assigned to SA David A. Carroll on March 16, 2006.

5. The file reveals that SA Shawna Carroll submitted an original "confirmatory AUSA letter" addressed to the United States Attorney, District of Oregon, to the Attention: AUSA Chris Cardani, on November 4, 2003. The stated purpose of the letter was "to confirm information furnished to and contact with AUSA Chris Cardani, [by SA Carroll] on November 3, 2003". This letter was approved and signed by Supervisory Special Agent Joseph J. Conli on behalf of Special Agent in Charge Robert J. Jordan. A copy was submitted to the U.S. Attorney, Portland, and also to the appropriate investigative files, including the Sedaghaty file.

6. Consistent with applicable FBI/DOJ policy at the time, this confirmatory letter cited AUSA Cardani's concurrence regarding each of several standard operational considerations pertaining to Confidential Human Sources. These included operation of the particular individual, contemplated coverage (including the Sedaghaty investigation) and the fact that Mr. Cabral was not expected to engage in consensual monitoring of conversations or participate in any unlawful activity, and thus such concurrence was not being requested at the time. (emphasis added)

Consistent with this Court's ruling that the defense may call SA David Carroll as a witness, the defense will seek to establish the following information from SA Shawna Carroll, almost all of which was listed in Defendant's original Response with regard to SA David Carroll, CR 548, p. 4:

(1) what documentation she made when the payments were made to Richard Cabral; (2) whether there are receipts of the payments and, if so, where the receipts are kept; (3) who had access to the receipts; (4) whether the Cabrals were advised of their tax obligations when the payments were made; (5) was this advice provided at the time that Barbara Cabral was present for the payment; (6) whether she sought an AUSA's approval for the payment of Richard and Barbara Cabral before trial, and if so, in what form; (7) if she sought approval, what AUSA provided that approval and in what form; (8) whether there are other reports and/or notes of any other communications between the FBI and Richard and/or Barbara Cabral that have not yet been provided to the defense, exculpatory or not; (9) what communication she had with AUSA Cardani and/or AUSA Gorder regarding the payments to Richard and Barbara Cabral; (10) what kind of communication she had with AUSA Cardani and/or AUSA Gorder regarding the potential payment to Barbara Cabral after trial; (11) why Barbara and/or Richard Cabral were at times treated as informants versus fact witnesses; (12) what information about the payments to Richard and Barbara Cabral exists in the source file; (13) what telephone logs she keeps; (14) what DOJ or FBI guidelines she relied on; (15) what communications she had with Barbara Cabral and what role she had with regard to this matter after the CHS file was re-assigned to SA David A. Carroll on March 16, 2006.

For the reasons stated above, and consistent with this Court's ruling that the defense may call Agents Colleen Anderson and David Carroll, Defendant respectfully requests that he be permitted to call SA Shawna Carroll at the hearing on his motion to dismiss. The defense expects that this additional witness will not materially prolong the hearing.

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AUSA Kelly Zusman has informed the defense that the Government opposes this request.

RESPECTFULLY SUBMITTED this 28th day of April, 2011.

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